Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1529

DONALD C. INGRAM and JOHN C. INGRAM
Petitioners,

v.

CHAMPLIN PETROLEUM COMPANY AND TRUSTS CREATED BY THE LAST WILL AND TESTAMENT OF JAY P. WALKER, DECEASED, ET AL.
Respondents.

On Petition For Writ of Certiorari To The United States Court of Appeals For the Tenth Circuit

JOINT BRIEF FOR RESPONDENTS IN OPPOSITION

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RESPONDENTS

CHAMPLIN PETROLEUM COMPANY, and TRUST B CREATED BY THE LAST WILL AND TESTAMENT OF JAY P. WALKER, DECEASED, and THE FIRST NATIONAL BANK AND TRUST COMPANY OF TULSA, ROSS T. WARNER AND HORACE D. BALLAINE, as Trustees thereof; TRUST C CREATED BY THE LAST WILL AND TESTAMENT OF JAY P. WALKER, DECEASED and THE FIRST NATIONAL BANK AND TRUST COMPANY OF TULSA, ROSS T. WARNER AND HORACE D. BALLAINE, as Trustees thereof; CHARITABLE TRUST CREATED BY PARA GRAPH 6 OF ARTICLE I OF THE LAST WILL AND TESTAMENT OF JAY P. WALKER, DECEASED, and THE FIRST NATIONAL BANK AND TRUST COMPANY OF TULSA, ROSS T. WARNER AND HORACE D. BALLAINE, as Trustees thereof; DONNA JO COOPER; MARTHA WALKER STURTEVANT TRUST and THE FIRST NATIONAL BANK AND TRUST COMPANY OF TULSA, as Trustee thereof; GUY O. MARCHANT; CAROL JEAN WALKER, a minor, and JUDITH WALKER, Guardian of her Estate; MARTHA WALKER STURTEVANT; WARNER INVESTMENT COMPANY, an Oklahoma Corporation; NONA C. SHUDDE ANNUITY TRUST AND DOUGLASS D. HEARNE, as Trustee thereof; and THE ESTATE OF W. F. KNODE, DECEASED, and MARGARET KNODE AND RALPH WILL, Executors thereof

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	1
STATEMENT OF FACTS	2
ARGUMENT	2
I. INTRODUCTION	2
II. THE WRIT SHOULD NOT BE GRANTED	3
A. This Case Does Not Present Significant Questions Concerning the Scope of 28 U.S.C. §1335 and Rule 22 of the Federal Rules of Civil Procedure	3
B. There Is No Conflict Between the Tenth Circuit Decision Rendered Below and Decisions from the Second, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Circuits	4
C. The Tenth Circuit Decision Is Fully Consistent with Applicable Decisions of This Court	7
D. The Tenth Circuit Decision Is Not In Conflict with Other Decisions of the Tenth Circuit	9
E. The Court of Appeals Has Not Decided a Relevant Question of State Law in a Way Conflicting with Its Own Decisions and Local Decisions of the Texas State Court	10
CONCLUSION	12
CERTIFICATE OF SERVICE	13

TABLE OF AUTHORITIES

CASES

Page

Ackerman v. King, 29 Tex. 291 (1867) 11

Aetna Casualty & Surety Co. v. Quarles, 92 F.2d 321 (4th Cir. 1937) 4

American Auto Ins. Co. v. Freundt, 103 F.2d 613 (7th Cir. 1939) 4

Brillhart v. Excess Ins. Co. of America, 316 U.S. 491 (1942) 9

Brown, Bonnell & Co. v. Lake Superior Iron Co., 134 U.S. 530 (1890) 6

Butler v. Exxon Corp., 559 S.W.2d 410 (Tex.Civ.App. 1977) 10

Chicago Corp. v. Wall, 293 S.W.2d 844 (Tex. 1957) 11

Cleveland v. Ward, 285 S.W. 1063 (Tex. 1926) 11

Coastal Air Lines v. Dockery, 180 F.2d 874 (8th Cir. 1950) 11

Commerce & Industry Ins. Co. v. Cablewave, Ltd., 412 F.Supp. 204 (S.D.N.Y. 1976) 8

Craig v. Champlin Petroleum Co., 421 F.2d 236 (10th Cir. 1970) 10, 11

Ellis v. Carter, 291 F.2d 270 (9th Cir. 1961) 10

Hickock v. Gulf Oil Corp., 265 F.2d 798 (6th Cir. 1959) 4, 5

Holcomb v. Aetna Life Ins. Co., 228 F.2d 75 (10th Cir. 1955), *cert. denied* 350 U.S. 986, *rehearing denied* 350 U.S. 1016 8

Humble Oil and Refining Co. v. Copeland, 398 F.2d 364 (4th Cir. 1968) 4, 5

Knoll v. Socony Mobil Oil Co., Inc., 369 F.2d 425 (10th Cir. 1966), *cert. denied* 386 U.S. 977 9

Le Cuno Oil Co. v. Smith, 306 S.W.2d 190 (Tex.Civ.App. 1957) 11

Levy v. Alexander, 170 F.Supp. 439 (E.D.N.Y. 1959) 6

Lewis v. Pitts, 275 S.W. 473 (Tex.Civ.App. 1925) 11

M.F.A. Mutual Ins. Co. v. Lusby, 295 F.Supp. 660 (W.D.Va. 1969) 6

Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Cavicchia, 311 F.Supp. 149 (S.D.N.Y. 1970) 6

Miller & Miller Auctionerrs, Inc. v. C. W. Murphy Industries, Inc., 472 F.2d 893 (10th Cir. 1966) 9

North Carolina Utilities Comm. v. F.C.C., 522 F.2d 1036 (4th Cir. 1977) 10

Pan American Petroleum Corp. v. Long, 340 F.2d 211 (5th Cir. 1964) 11

Peck v. Jenness, 7 How. 612 (1849) 7

Reynes v. Dumont, 130 U.S. 354 (1889) 6

Shell Oil Co. v. Frusetta, 290 F.2d 689 (9th Cir. 1961) ... 4

Southern California Petroleum Corp. v. Harper, 273 F.2d 715 (5th Cir. 1960) 4

State Farm Mutual Ins. Co. v. Hugee, 115 F.2d 298 (4th Cir. 1940) 4

Thompson v. Moore, 109 F.2d 372 (8th Cir. 1940) 4

TRW Inc. v. Ellipse Corp., 495 F.2d 314 (7th Cir. 1974) . 4

Weisfeld v. Spartans Industries, Inc., 58 F.R.D. 570 (S.D.N.Y. 1972) 6

Wisniewski v. United States, 353 U.S. 901 (1957) 10

Statutes and Rules

28 U.S.C. §1335 .....3, 6

28 U.S.C. §2283 7

28 U.S.C. §2361 ..... 4, 7, 8

Rule 19, Supreme Court Rules, 28 U.S.C. App. 2, 10

Rule 35(a), Federal Rules of Appellate Procedure, 28 U.S.C. App. 10

Rule 22, Federal Rules of Civil Procedure, 28 U.S.C. App. 3

Other Materials

Annot., 5 A.L.R. Fed. 10 ..... 4, 5, 6

3A *Moore's Federal Practice*, ¶22.13 8

Stern & Gressman, *Supreme Court Practice*, (4th Ed. 1969)
§4.6 10
§4.10 11

7 Wright & Miller, *Federal Practice and Procedure* §1717 8

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QUESTIONS PRESENTED FOR REVIEW

Only questions 1, 8 and 9 of petitioners' listed "Questions Presented" are properly before this Court. The remainder of petitioners' questions either contain unwarranted assumptions upon which the questions are based or are purely argumentative.

STATEMENT OF FACTS

The facts of the case are stated fully and correctly in the decisions of the District Court (Petitioners' Appendix C (1) and (3)) and the Court of Appeals (Petitioners' Appendix A). The petitioners' statement of facts is incomplete and incorrect.

ARGUMENT

I. INTRODUCTION

Contrary to the conclusory allegations of the petition, this case does not merit Supreme Court review. Paraphrasing the words of Rule 19 of the Supreme Court Rules, this case:

> (1) does not involve a decision in conflict with decisions of other courts of appeal;
>
> (2) does not decide an important state question in a way in conflict with applicable state law;
>
> (3) does not decide an important question of federal law which has not been, but should be, settled by this Court;
>
> (4) does not decide a federal question in a way in conflict with applicable decisions of this Court; and
>
> (5) does not involve such a departure from the accepted and usual course of judicial proceedings to call for an exercise of this Court's powers of supervision.

What this case does involve is a question of state contract law, competently decided by the District Court and the Court of Appeals for the Tenth Circuit. The case involves a unique oil and gas instrument with two royalty provisions governing gas. The

issues involved are narrow ones, involving settled principles of contract interpretation. It is highly unlikely that any other instrument like the one in this case exists. No significant precedent could be established by this Court in granting certiorari and resolving the issues presented therein.

Each of petitioners' reasons for granting certiorari is hereafter discussed, in the order presented in the petition for a writ of certiorari.

II. THE WRIT SHOULD NOT BE GRANTED

A. This Case Does Not Present Significant Questions Concerning the Scope of 28 U.S.C. §1335 and Rule 22 of the Federal Rules of Civil Procedure.

Of course, §1335 is involved because §1335 was the basis for the District Court's jurisdiction. Rule 22 is not involved, nor was it ever cited as authority by the respondents in their briefs to the Tenth Circuit or by the Tenth Circuit in its opinion. Finally, the petitioners merely claim that the procedural decisions of the Supreme Court and of the lower courts "spotlight the confusion and consternation on the part of lesser federal courts in deciding procedural questions in cases concerning . . . 28 U.S.C. §1335." (Petition, p. 8). The petitioners chose not to enlighten either the Court or the respondents as to what the confusion and consternation is concerning §1335. The practice and procedure under §1335 is perfectly clear, well established, and followed consistently througout the circuits. Therefore, there is no need for this Court to "clarify the meaning and effect of these two provisions governing federal courts." (Petition, p. 8).

B. There Is No Conflict Between the Tenth Circuit Decision Rendered Below and Decisions from the Second, Fourth, Fifth, Sixth, Seventh, Eight and Ninth Circuits.

The cases cited by the petitioners as contrary to the holding of the Tenth Circuit are irrelevant. Except for the cases of *Hickock v. Gulf Oil Corp.*, 265 F.2d 798 (6th Cir. 1959) and *Humble Oil and Refining Co. v. Copeland*, 398 F.2d 364 (4th Cir. 1968), all the cited cases were declaratory judgment cases, and not statutory interpleader cases. The statutory interpleader statute (28 U.S.C. §2361) itself permits restraining orders against pending state court proceedings. (See Subpart C, *infra*, at p. xxvii). Furthermore, in those declaratory judgment cases, the appellate court merely affirmed the exercise of discretion of the trial court in staying the federal declaratory judgment action until resolution of the pending state court proceeding. Staying the federal action was a matter of the discretion of the trial judge, in confirmation of the general rule that the power of a federal court to stay its proceedings while a similar state action is pending (when not involving title to real property) is a matter of comity, not jurisdiction. *See Annot.*, 5 A.L.R. Fed. 10 at §§4 and 5. Finally, in the cited declaratory judgment cases, the federal actions were dismissed because either all the parties in the federal action were involved in the pending state action, (*Aetna Casualty & Surety Co. v. Quarles*, 92 F.2d 321 (4th Cir. 1937); *American Auto Ins. Co. v. Freundt*, 103 F.2d 613 (7th Cir. 1939); *Shell Oil Co. v. Frusetta*, 290 F.2d 689 (9th Cir. 1961)), because realignment of the parties according to interest destroyed diversity of citizenship, (*State Farm Mutual Ins. Co. v. Hugee*, 115 F.2d 298 (4th Cir. 1940); *Thompson v. Moore*, 109 F.2d 372 (8th Cir. 1940)), because no justiciable controversy was presented, (*TRW Inc. v. Ellipse Corp.*, 495 F.2d 314 (7th Cir. 1974)), or because the state action did not relitigate a prior federal decision (*Southern California Petroleum Corp. v. Harper*, 273 F.2d 715 (5th Cir. 1960)).

Humble Oil Co., supra, and *Hickok, supra*, are statutory interpleader cases. Neither case supports the petitioners.

(1) Both cases involved interests in land and construction of wills purporting to devise realty. In the present lawsuit, neither the Texas state action nor the federal interpleader action was couched in terms of real property. The Champlin interpleader complaint involved monies received for the sale of gas produced and a dispute as to whom was entitled thereto. No real property was involved, and no title to real property was sought to be determined in the Oklahoma interpleader action. The Tenth Circuit specifically so held. (Petitioners' Appendix, 4a-5a).

Indeed, both the *Hickock* Court and the *Humble* Court indicated that faced with the same situation confronting the Tenth Circuit below, they would both have ruled the same way. In *Hickock*, the Court stated that in an interpleader action, a federal court has "unquestioned jurisdiction" over the proceeds from the sale of an interest in extraterritorial land and has power "to adjudicate title to the fund" under applicable law. 265 F.2d at 801. In *Humble, supra*, the Court stated that where the parties' rights to land were based on contract, such interests could be determined in an in personam action by a federal court sitting in another state in an interpleader action. 398 F.2d at 367. In cases not involving real property, the accepted rule is that a federal court's power to stay its proceedings while similar state action is pending is a matter of comity, not jurisdiction, and within the sound discretion of the trial court. *Annot.*, 5 A.L.R. Fed. 10 at §§4-5.

(2) In both the *Hickock* and *Humble* cases, all the relevant parties were represented in the state court proceedings. Such is not the case in the present litigation.

The working interest owners were not parties to the Texas state action nor did petitioners in the lower courts ever attempt to specifically demonstrate how all the working interest owners could be brought into the state court proceedings. The fact that certain parties to an action in a federal district court were not before a state court in which a similar action was pending has been generally held to be a sufficient reason for denying a stay. *Annot.*, 5 A.L.R. Fed. at §10(B). Indeed, one of the primary purposes for §1335 was to provide a forum for cases where a state court could not obtain jurisdiction over all the parties. *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Cavicchia*, 311 F. Supp. 149 (S.D.N.Y. 1970); *M.F.A. Mut. Ins. Co. v. Lusby*, 295 F.Supp. 660 (W.D.Va. 1969). In addition, this action is testimony to the usefulness of the statutory interpleader device, which permits nationwide service of process. The interpleader statute permitted the bringing of all the parties together, allowed deposit into the court of the fund, and a complete resolution of the issue. There has been no showing that the Texas state court action could do the same.

(3) The issue of the adequacy of the state remedy was not raised in the District Court and was first raised on appeal to the Tenth Circuit. Therefore, it may not be raised in this Court. *cf., Brown, Bonnell & Co. v. Lake Superior Iron Co.*, 134 U.S. 530 (1890); *Reynes v. Dumont*, 130 U.S. 354 (1889) (the existence of an adequate legal remedy in an equity case may not be first raised on appeal).

(4) Denial of a stay is proper where federal procedural advantages would be lost by the granting of the stay. *See, e.g., Levy v. Alexander*, 170 F.Supp. 439 (E.D.N.Y. 1959); *Weisfeld v. Spartans Industries, Inc.*, 58 F.R.D. 570 (S.D.N.Y. 1972). The procedural advantage of which petitioners seek to deprive respondents is a complete resolution of the issue, with all interested parties brought into the action.

The petitioners then attempt to artificially create a conflict with cases purportedly holding that a district court lacks jurisdiction when a party does not deposit into court all disputed funds in its possession at the time of the institution of the suit. Two things must be stated:

(1) Respondent Champlin did not admit it had failed to deposit all disputed funds in its possession; it merely offered to, out of its own pocket, deposit additional funds should the District Court or the Tenth Circuit deem it necessary, and

(2) the cases cited by the petitioners merely stand for the unquestioned proposition that one must deposit all the disputed funds in one's possession to institute statutory interpleader. Since all the disputed funds were deposited by Champlin into the District Court, as found by the Tenth Circuit (Petitioners' Appendix, pp. 4a–5a), statutory interpleader was proper, and the cited cases have no application.

There is no conflict between the Tenth Circuit's decision and decisions cited by petitioners in reason 2 of their petition.

C. The Tenth Circuit Decision Is Fully Consistent With Applicable Decisions of This Court.

Petitioners contend that the Tenth Circuit's decision is contrary to this Court's decision in *Peck v. Jenness*, 7 How. 612 (1894) that a court will not enjoin similar proceedings in another court. While this may be true as a general principle of law (*see*, 28 U.S.C. §2283), the Congress of the United States has fashioned a specific exception for statutory interpleader cases. This is a statutory interpleader case. Section 2361 of Title 28 states:

> "In any civil action of interpleader . . . under Section 1335 . . . . a district court may . . . enter its order restraining them [the claimants] from instituting or prosecuting any proceeding in any State or United States court affecting the property, instrument or obligation involved in the interpleader action until further order of the court."

The issuance of a temporary restraining order or injunction under this section is discretionary. *Commerce & Industry Ins. Co. v. Cablewave Ltd.*, 412 F.Supp. 204 (S.D.N.Y. 1976); 7 Wright & Miller, *Federal Practice and Procedure*, §1717. The Tenth Circuit has simply upheld the District Court's exercise of its discretion. The Tenth Circuit's action is certainly not contrary to the specific provision of §2361 allowing injunctions to prevent the prosecution of a state court proceeding affecting the property involved in the interpleader action. This is all that the District Court did in the present case. At the resolution of the matter concerning the property deposited into the District Court, the District Court denied respondent Champlin's motion for a permanent injunction forbidding the petitioners from instituting or prosecuting the state court action. (Petitioners' Appendix, pp. 18a–19a). Respondents did not appeal the District Court's denial of a permanent injunction. The petitioners are now perfectly free to resume prosecution of their state court proceeding, and, in fact, have done so.

Actions for statutory interpleader, therefore, are an exception to the well-recognized rule against issuing injunctions to stay state court proceedings. *Holcomb v. Aetna Life Ins. Co.*, 228 F.2d 75 (10th Cir. 1955), *cert. denied*, 350 U.S. 986, *rehearing denied*, 350 U.S. 1016; 3A *Moore's Federal Practice*, ¶22.13 at p. 3103.

Brillhart v. Excess Ins. Co. of America, 316 U.S. 491 (1942), is not on point. *Brillhart* was an action for declaratory judgment under the Declaratory Judgments Act and based on diversity of citizenship. Furthermore, in *Brillhart*, the Supreme Court specifically found that another proceeding was pending in a state court in which all the matters in controversy between the parties could be fully adjudicated. The Court of Appeals had held that the dismissal of the federal suit was an abuse of discretion and reversed the district court judgment with directions that the district court proceed to a determination on the merits. The Supreme Court reversed the Court of Appeals, and remanded to the district court for an exercise of its discretion. *Brillhart*, therefore, is not contrary to the decisions of the District Court and the Tenth Circuit. If relevant at all, *Brillhart* reinforces the correctness of the Tenth Circuit decision.

The Tenth Circuit decision does not conflict with decisions of this Court.

D. The Tenth Circuit Decision Is Not In Conflict With Other Decisions of the Tenth Circuit.

Petitioners argue that the decision of the Tenth Circuit below is contrary to other decisions of the Tenth Circuit, namely, *Miller v. Miller Auctioneers, Inc. v. G. W. Murphy Industries, Inc.*, 472 F.2d 893 (10th Cir. 1973); *Knoll v. Socony Mobil Oil Co., Inc.*, 369 F.2d 425 (10th Cir. 1966), *cert. denied* 386 U.S. 977. The Tenth Circuit found no conflict between those cases and its decision. In fact, the Tenth Circuit distinguished *Miller, supra*, on the ground that in *Miller* the stakeholder had not deposited all the funds in its possession. (Petitioners' Appendix, pp. 4a, 5a).

Assuming *arguendo* that there is a conflict in the Tenth Circuit between its decision below and past decisions, the

existence of this *intra-circuit* conflict does not provide grounds for certiorari. Stern & Gressman, *Supreme Court Practice* (4th Ed. 1969), §4.6. Petitioners confuse *intra-circuit* conflicts with *inter-circuit* conflicts. The existence of an *inter-circuit* conflict is a proper reason for the Supreme Court's granting of a writ of certiorari. Rule 19, Supreme Court Rules. *Intra-circuit* conflicts, on the other hand, are properly resolved through rehearings en banc before the Court of Appeals. Federal Rules of Appellate Procedure, Rule 35(a); *Wisniewski v. United States*, 353 U.S. 901 (1957); *North Carolina Utilities Comm. v. F.C.C.*, 552 F.2d 1036 (4th Cir. 1977); *Ellis v. Carter*, 291 F.2d 270 (9th Cir. 1961). Petitioners never requested a rehearing en banc, nor did the petitioners ever suggest in their petition for rehearing that there was a conflict between the decision of the Tenth Circuit below and prior decisions of that Court.

E. The Court of Appeals Has Not Decided a Relevant Question of State Law in a Way Conflicting with Its Own Decisions and Local Decisions of the Texas State Courts.

Petitioners content that the Tenth Circuit's holding that the division order in question was a binding contract until revoked conflicted with the Tenth Circuit's own decision in *Craig v. Champlin Petroleum Co.*, 421 F.2d 236 (10th Cir. 1970) and with the Texas decision of *Butler v. Exxon Corp.*, 559 S.W.2d 410 (Tex.Civ.App. 1977). This is nonsense. First of all, the Tenth Circuit in its decision below never held that division orders in Texas were binding until revoked. The Tenth Circuit merely held that the petitioners had knowledge of the parties' construction placed upon the contract of sale of gas through the petitioners' execution of the division orders. (Petitioners' Appendix, pp. 6a–7a). Nowhere in the Tenth Circuit decision is there found a holding that the division orders were binding until revoked. This Court certainly should not resolve an issue not presently relevant or in controversy.

In any event, it should be noted that *Craig* construed Oklahoma, not Texas, law. Decisions of both the Fifth Circuit Court of Appeals (applying Texas law) and the Supreme Court of Texas have held that division orders are binding until revoked. *Chicago Corp. v. Wall*, 293 S.W.2d 844 (Tex. 1957); *Pan American Petroleum Corp. v. Long*, 340 F.2d 211 (5th Cir. 1964). *See also, Le Cuno Oil Co. v. Smith*, 306 S.W.2d 190 (Tex.Civ.App. 1957).

The Supreme Court of the United States is certainly not a proper forum to adjudicate asserted conflicts of interpretation of state law when such purported conflicts are not now relevant to the lower court's determination of the issues. The clear policy of this Court is to decline review where a court of appeals has reached a reasonable and permissible result based on state law. Stern & Gressman, *Supreme Court Practice*, (4th Ed. 1969), §4.10.

The cases of *Cleveland v. Ward*, 285 S.W. 1063 (Tex. 1926), a case involving conflicts of jurisdiction among Texas state courts, *Lewis v. Pitts*, 275 S.W. 473 (Tex.Civ.App. 1925), a case involving title to real property, and *Ackerman v. King*, 29 Tex. 291 (1867), a case involving the effect of a preceding federal admiralty suit on a subsequent state action for money, are totally irrelevant to the issues at hand. The question of a federal court staying the interpleader suit while a pending state action proceeds is a matter of federal, not state, law. *cf., Coastal Air Lines v. Dockery*, 180 F.2d 874 (8th Cir. 1950) (§1335 interpleader procedure).

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE BY MAILING

I hereby certify that I have mailed true and correct copies of the foregoing "Joint Brief For Respondents In Opposition," by U.S. mail, postage prepaid, to the following:

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Rules Dorwart